

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0263, Request for an Opinion of the Justices (Recommendations of Marital Masters), the court on April 19, 2007, issued the following order:**

The following request of the senate for an opinion of the justices was adopted on April 12, 2007, and filed with the supreme court on April 17, 2007:

### SENATE RESOLUTION 1

Whereas, SB 112, “An Act relative to recommendations of marital masters,” is presently pending in the senate; and

Whereas, SB 112 provides that “all recommendations of marital masters shall become final unless within 10 days of the date of the clerk’s written notice of the recommendation, a party requests that the recommendation be reviewed by a judge:” and

Whereas, part II, article 46 of the New Hampshire constitution states: “All *judicial officers*, the attorney general and all officers of the navy and general and field officers of the militia, *shall be nominated and appointed by the governor and council*; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto.” (emphasis added); and

Whereas, part II, article 73 of the New Hampshire constitution states: “The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and *all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution*. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature.” (emphasis added); and

Whereas, in Opinion of the Justices, 128 N.H. 17 (1986), the New Hampshire supreme court held that marital masters were not judicial officers within the meaning of part I, article 46 of the New Hampshire constitution

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because they were neither nominated and appointed by the governor and council, nor enjoyed tenure during good behavior, and that such masters “are authorized to make recommendations, which, though normally approved, have no binding force upon the court;” and

Whereas, in Witte v. Justices of the N.H. Superior Court, 831 F.2d 362 (1987), the United States Court of Appeals for the First Circuit held that marital masters in New Hampshire “have no inherent power, but rather derive all their power from the appointing judge or from the agreement of the parties;” and

Whereas, in 2005, 177:14 (later codified as RSA 490-D:7), the legislature provided that henceforth the administrative judge of the judicial branch family division shall submit to the governor the name of a marital master nominee, and that upon acceptance by the governor, such nominee would be submitted to the executive council for confirmation, *see* RSA 490-D:7, II, but that once confirmed such new marital master is appointed for a specific term, *see* RSA 490-D:7, III; *see also* Super. Crt. Admin. R. 12-6; and

Whereas, a public hearing was held before the senate judiciary committee on SB 112, and the bill was reported out of committee with a recommendation of ought to pass and, upon second reading before the senate, was laid upon the table because a question has been raised concerning whether only the opportunity for review by a judge of a recommendation of a marital master is in any way contrary to the New Hampshire constitution; and

Whereas, SB 112 raises an important question of law awaiting further consideration and action in the New Hampshire senate; now therefore, be it

Resolved by the Senate:

That, pursuant to part II, article 74 of the New Hampshire constitution, the justices of the supreme court be respectfully requested to give their opinion as expeditiously as possible on the following questions of law:

1. Would the enactment of SB 112, authorizing all recommendations of marital masters to become final within 10 days of the date of the clerk’s written notice of the recommendation unless a party requests that the recommendation be reviewed by a judge, as applied to recommendations of

marital masters in both the judicial branch family division and in the superior  
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court, violate the requirements of part II, article 46 and/or part II, article 73 of the New Hampshire constitution?

2. Would the enactment of SB 112 violate any other provision of the New Hampshire constitution?

That the clerk of the senate transmit copies of this resolution and SB 112 as recommended ought to pass by the senate judiciary committee, to the justices of the New Hampshire supreme court.

Typewritten memoranda on the questions presented by the request may be furnished by any legislator, attorney, organization, interested party, or member of the public on or before May 11, 2007. An original and eight copies of any memorandum must be filed with the clerk's office.

This order is entered by a single justice (Galway, J.). See Rule 21(7).

**Eileen Fox,**  
**Clerk**

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